

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
MARCH 14, 2005

D044665 Brown v. National Steel and Shipbuilding Co.

The judgment is affirmed. O'Rourke, J.; We Concur: McConnell, P.J., Nares, J.

D044133 In re Willie J., a Juvenile

The juvenile court's order is affirmed. O'Rourke, J.; We Concur: Huffman, Acting P.J., Haller, J.

D045230 Howell, Jr. v. Burns

On the court's own motion and for good cause, the issuance of the remittitur is STAYED pending resolution of appellant's motion to vacate the dismissal. (Cal. Rules of Court, rule 26(c)(2)).

D045931 In re Wilkerson on Habeas Corpus

The petition is denied.

D045889 City of Encinitas Fire Department et al. v. Workers Compensation Appeals Board/Michael Holtel

At the request of petitioners, the petition for writ of review is dismissed.

Court convened at 9:00 a.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Alex McDonald
Clerk: D. E. Moore

D044559 Blackburne & Brown Mortgage Company Inc., v. Ateeq

Cause called on merits. Roy Carlson, Esq. argued for appellant. M. Steven Andersen, Esq. argued for respondent. Mr. Carlson replied. Cause submitted.

Court recessed at 9:20 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Cynthia Aaron

D044120 Brierton v. Department of Motor Vehicles

Cause called on merits. Chad B. Wootton, Esq. argued for appellant. John J. Spangler, Deputy Attorney General argued for respondent. Mr. Wootton replied. Cause submitted.

Court recessed at 9:53 a.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and Joan Irion

D044190 Tetzlaff v. Tri-City Healthcare District

Cause called on merits. Cynthia R. Chihak, Esq. argued for appellant. Martha L. McGill, Esq. argued for appellant. Ms. Chihak replied. Cause submitted.

Court recessed at 10:42 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
MARCH 14, 2005 (Continued)

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre
Clerk: D. E. Moore

D044554 Goggin v. County of San Diego

Cause called on merits. Laura K. Kail, Esq. argued for appellant. English Bryant, Deputy County Counsel argued for respondent. Ms. Kail replied. Cause submitted.

D044079 City of San Diego v. Barratt American Incorporated et al.

Cause called on merits. David William Skinner, Esq. argued for appellant. Jeffrey M. Oderman, Esq. argued for respondent. Mr. Skinner replied. Cause submitted.

D042545 San Diego Metropolitan Transit Development Board v. R V Communities

Cause called on merits. Bruce W. Beach, Esq. argued for appellant. Charles A. Bird, Esq. argued for respondent. Mr. Beach replied. Cause submitted.

Court recessed at 2:53 p.m. until Tuesday, March 15, 2005 at 9 a.m.

D045546 In re Alyssa O., a Juvenile

Respondent's unopposed motion to dismiss the appeal is GRANTED. The appeal is dismissed.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
MARCH 15, 2005

D045050 In re Elijah V., a Juvenile

The opinion filed February 15, 2005, is ordered certified for publication.

D044600 People v. Mason

Upon filing an abandonment of appeal, personally signed by the defendant, the appeal is dismissed and the remittitur is ordered to issued immediately (Cal. Rules of Court, rule 30.3).

D043748 People v. Sandoval

The conviction is affirmed. The sentence is reversed and the matter is remanded for resentencing. McConnell, P.J.; I Concur: McDonald, J.; Dissenting Opinion: Irion, J.

D044448 Szold v. Medical Board of California et al.

The judgment is affirmed. Szold shall bear costs on appeal. CERTIFIED FOR PUBLICATION
Aaron, J.; We Concur: Huffman, Acting P.J., McDonald, J.

Court convened at 9:00 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices
Gilbert Nares and Terry O'Rourke

Clerk: D.E. Moore

D043198 People v. Javier Rodriguez

Cause called on merits. Robert L. Swain, Esq. argued for appellant. Garry G. Haehnle, Deputy Attorney General argued for respondent. Mr. Swain replied. Cause submitted.

Court recessed at 9:22 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

D045047 Jeffrey P. et al., Juveniles

Cause called on merits. Kathleen M. Mallinger, Esq. argued for appellant. Gary Seiser, Deputy County Counsel argued for respondent. M. Elizabeth Handy, Esq. argued for minors. Ms. Mallinger replied. Cause submitted.

Court recessed at 9:49 a.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Terry O'Rourke

D043510 People v. Michael Rodriguez

Cause called on merits. Arthur Martin, Esq. argued for appellant. Jon Lynn, Deputy Attorney General argued for respondent. Mr. Martin replied. Cause submitted.

D044310 DePhillips v. Hale

Cause called on merits. Judith E. Klein, Esq. argued for appellant. Stephen Temko, Esq. argued for respondent. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
MARCH 15, 2005 (Continued)

Court recessed at 10:35 a.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion

D042936 Chapman v. Trustees of the California State University

Cause called on merits. Brendon Ishikawa, Esq. argued for appellant. Martin W. Hagan, Deputy Attorney General argued for respondent. Mr. Ishikawa replied. Cause submitted.

(Cases argued together.)

D043402 Chapman v. Board of Trustees of the California State University

Cause called on merits. Martin Hagan, Deputy Attorney General argued for appellant/cross-respondent. Brendon Ishikawa, Esq. argued for respondent/cross-appellant. Mr. Hagan replied. Cause submitted.

Court recessed at 11:20 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Judith Haller and Cynthia Aaron

Clerk: D. Moore

D044719 In re Robert P., et al., Juveniles

D045627 In re Robert P., a minor on Habeas Corpus

Cause called on merits. Christopher Blake, Esq. argued for Robert P. Neil Trop, Esq. argued for appellant. Kate Bird, Deputy County Counsel argued for respondent. M. Elizabeth Handy, Esq. argued for Christina and Michael G., but did not argue. Alice C. Shotton, Esq. argued for Julian G. Linda Fabian, Esq. argued for Veronica G. Mr. Blake replied. Mr. Trop replied. Cause to be submitted at a later date.

Court recessed at 2:15 p.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Gilbert Nares and Cynthia Aaron

D043970 Shepherd v. Dominion of Canada General Insurance et al.

Cause called on merits. Manuel Corrales, Jr., Esq. argued for appellant. Dawn Grossman, Esq. was present in oral argument for respondent, Dominion of Canada. Jerry Coughlan, Esq. was present in oral argument for respondent, Riedl and etc. Cause submitted.

Court recessed at 2:43 p.m. to change panel members. New panel members: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices Judith Haller and Cynthia Aaron

D044468 Ilko et al. v. Elisa Marquez de la Cruz

Cause called on merits. Phillip Burkhardt, Esq. argued for appellant. Donald A. Vaughn, Esq. argued for respondent. Mr. Burkhardt replied. Cause submitted.

Court recessed at 3:07 p.m. until Wednesday, March 16, 2005 at 9 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
MARCH 15, 2005 (Continued)

D043057 Butera v. MacLeod et al.

The judgment dismissing Catalano from this lawsuit is reversed. The order denying MacLeod's motion to strike is affirmed. Butera's motion to dismiss Rice's appeal is denied and the order denying Rice's motion to strike is affirmed. Butera shall have costs on appeal. Irion, J.; I Concur: Nares, Acting P.J.,
Dissenting opinion: Aaron, J.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
MARCH 16, 2005

D045880 Jackson B. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Jackson B. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 38.1 will not be filed as there are no viable issues for writ review. The case is dismissed.

D045892 Bonnie A. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Bonnie A. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 38.1 will not be filed as there are no viable issues for writ review. The case is dismissed.

D045101 People v. Armes

Upon filing an abandonment of appeal, the appeal is dismissed.

D044612 Photomedex, Inc. v. Dean Stewart Irwin et al.

The petition for rehearing is denied.

D043758 People v. Garrido

The petition for rehearing is denied.

D043964 Conservatorship of the Bracks

The judgment is affirmed. Huffman, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D043603 Cardoza v. Dar Side Inc., et al.

The judgment is affirmed. Cardoza is awarded costs on appeal. McConnell, P.J.; We Concur: Haller, J., O'Rourke, J.

D045242 In re Jennifer T., a Juvenile

Judgment affirmed. O'Rourke, J.; We Concur: Benke, Acting P.J., McIntyre, J.

D045492 Potthoff et al. v. Superior Court of San Diego County/Kayser et al.

The writ proceeding is dismissed. The order to show cause is discharged. The stay issued by this court on January 20, 2005, is vacated.

D041600 Sagi v. Infinity Capital, LLC et al.

The petition for rehearing is denied.

D045876 In re Smiley on Habeas Corpus

The petition is denied.

D045881 In re Santos on Habeas Corpus

The petition is denied.

Court convened at 9:00 a.m.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
MARCH 16, 2005 (Continued)

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices
Judith Haller and Terry O'Rourke
Clerk: D. Moore

D044487 People v. Mai

Cause called on merits. Cheryl Edwards Tannenberg, Esq. argued for appellant. Robert Foster, Deputy General argued for respondent. Ms. Tannenberg replied. Cause to be submitted at a later date.

Court recessed at 9:50 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Cynthia Aaron

D043044 Redevelopment Agency of the City of San Diego v. Attisha et al.

D045916 Attisha et al. v. Superior Court

Cause called on merits. David A. Niddrie, Esq. argued for appellant. Donald W. Detisch, Esq. argued for respondent. Mr. Niddrie replied. Cause submitted as to the appeal only.

Court recessed at 10:19 a.m. to change panel members. New panel members: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Terry O'Rourke and Joan Irion

D043397 Sempra Energy Resources v. California Department of Water Resources

Cause called on merits. Catherine A. Jackson, Deputy Attorney General argued for appellant. Thomas Bernard Watson, Esq. was present in oral argument for respondent, but did not argue. J. Michael Hennigan, Esq. argued for respondent. Ms. Jackson replied. Cause submitted.

Court recessed at 10:40 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Gilbert Nares, Acting Presiding Justice, and The Honorable Associate Justices
Judith Haller and Terry O'Rourke
Clerk: D. Moore

D043776 Bisnar & Chase, LLP v. Balascio et al.

Cause called on merits. Janice R. Mazur, Esq. argued for appellant. Omar F. Medina, Esq. argued for respondent. Alan L. Van Gelder, Esq. argued for respondent, Greene, Broillet. Ms. Mazur replied. Cause submitted.

D044046 Bachmann v. Rogers, III, et al.

Cause called on merits. James R. Ballard, Esq. argued for appellant. Michael J. Hickman, Esq. argued for respondent. Mr. Ballard replied. Cause submitted.

Court recessed at 2:20 p.m. for a change of panel. New panel members: The Honorable Tamara Lave, Deputy Public Defender argued for appellant. Tina Fairfax, Certified Law Student argued for respondent. Ms. Lave replied. Cause submitted.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
MARCH 16, 2005 (Continued)

D044290 People v. Potter

Cause called on merits. Tamara Lave, Deputy Public Defender argued for appellant. Tina Fairfax, Certified Law Student argued for respondent. Ms. Lave replied. Cause submitted.

D044596 Econo Lube N' Tune, Inc. v. Pavanis I, LLC

Cause called on merits. Thomas Preston Aplin, Esq. argued for appellant. Jamie J. Sternberg, Esq. argued for appellant. Mr. Aplin replied. Cause submitted.

D043779 Smith v. National Securities Corporation et al.

Cause called on merits. Timothy C. Karen, Esq. argued for appellant. George Michael Belfield, Esq. argued for respondent, National Securities Corporation. David D. Piper, Esq. argued for respondent, Roth Capital Partners, LLC and etc. John B. Wallace, Esq. argued for respondent, Allocca. Mr. Karen replied. Cause submitted.

Court recessed at 3:20 p.m. until Thursday, March 17, 2005 at 9 a.m.

D042582 City of San Diego v. Barratt American Incorporated et al.

The request for publication of the opinion is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
MARCH 17, 2005

D043246 People v. Jungers

The judgment is affirmed. CERTIFIED FOR PUBLICATION. Irion, J.; We Concur: Huffman, Acting P.J., McDonald J.

D044004 Depierro et al. v. Lachut et al.

The order denying Depierro's petition for arbitration is reversed. The matter is remanded with directions that the trial court conduct a hearing to resolve whether the arbitrator's determination of Pro-Tech's fair value will necessarily encompass any issues set forth in Lachut's claims of fraud and mismanagement of corporate assets; and fashion the scope of a stay, if any, of Lachut's cross-complaint pending arbitration. O'Rourke, J.; We Concur: Haller, Acting P.J., Irion, J.

D045942 Sea-Pac Insurance Managers, Inc. v. Superior Court of San Diego County/M & F Fishing, Inc.

The petition is denied. The stay issued February 25, 2005, is vacated.

D044090 In re Christopher M., a Juvenile

It is ordered that the opinion filed herein on February 18, 2005, be modified as follows: [see order]. There is no change in the judgment. The opinion in the above-entitled matter filed on February 18, 2005, was not certified for publication in the Official Reports. For good cause shown in the respondent's request for publication, it now appears that the opinion, as modified sua sponte herein, should be published in the Official Reports and it is so ordered.

D043947 People v. Noche

The judgment is affirmed. Nares, J.; I Concur: Aaron, J.; Concurring in the Result: Benke, Acting P.J.

D044437 People v. Wright

The order is affirmed. McIntyre, J.; We Concur: McConnell, P.J., Haller, J.

D042157 People v. Smith

The judgment is affirmed. Nares, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D043396 Cacho et al. v. Boudreau et al.

The amended judgment is affirmed. Costs are awarded to Respondents. CERTIFIED FOR PUBLICATION. Huffman, Acting P.J.; We Concur: McIntyre, J., Aaron, J.

D045888 In re Downey on Habeas Corpus

The petition is denied.

D042546 American Interbanc Mortgage, LLC v. E-Lenders Rerport Card Inc., et al.

The judgment is affirmed. Benke, Acting P.J.; We Concur: Huffman, J., McDonald, J.

D039841 People v. Rountree

D044957 In re Rountree on Habeas Corpus

The above-entitled appeals are consolidated for disposition.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
MARCH 17, 2005 (Continued)

D039841 People v. Rountree

D049957 In re Rountree on Habeas Corpus

(consolidated) The judgment is affirmed. Rountree's request for authorization of expert fees and petition for a writ of habeas corpus is denied. O'Rourke, J.; We Concur: Benke, Acting P.J., Haller, J.

D043771 Cota et al. v. Heffernan Memorial Hospital et al.

The judgment is affirmed. Irion, J.; We Concur: Benke, Acting P.J., Huffman, J.

D043221 People v. Roberts

The judgment is affirmed. McDonald, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D043082 People v. Henderson

The opinion filed February 18, 2005, is modified. No change in judgment. The petition for rehearing is denied.

D042932 In re Marriage of SanFilippo

Order affirmed. Benke, J.; We Concur: McConnell, P.J., Huffman, J.

D045202 In re Adrian V., a Juvenile

Judgment affirmed. Nares, J.; We Concur: Huffman, Acting P.J., McIntyre, J.

D044032 People v. Ambrose

The judgment is affirmed. McIntyre, J.; We Concur: Haller, Acting P.J., McDonald, J.

D045905 In re Sua on Habeas Corpus

The petition is denied.

D046030 Ayala v. Superior Court of San Diego County/Ayala

The petition is denied.

Court convened at 9 a.m.

Present: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Richard Huffman and Joan Irion

Clerk: D. Moore

D043572 People v. Villa

Cause called on merits. Richard Power, Esq. argued for appellant. Warren Robinson, Deputy Attorney General argued for respondent. Mr. Power replied. Cause submitted.

Court recessed at 9:24 a.m. to change panel members. New panel members: The Honorable Judith McConnell, Presiding Justice, and The Honorable Associate Justices Cynthia Aaron and Joan Irion

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
MARCH 17, 2005 (Continued)

D045081 In re Consiglio on Habeas Corpus

Matter called on merits. John P. Ward, Esq. argued for petitioner. Lilia Garcia, Deputy Attorney General argued for respondent. Mr. Ward replied. Matter submitted.

D044598 Thornton et al. v. Computer Education Institute, Inc.

Cause called on merits. Keith Zakarin, Esq. argued for appellant. Lawrence J. Salisbury, Esq. argued for respondent. Mr. Zakarin replied.

Court recessed at 9:57 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Richard Huffman and James McIntyre

Clerk: D. Moore

D043697 Shirk v. Vista Unified School District et al.

Cause called on merits. Manuel Corrales, Jr., Esq. argued for appellant. Paul Carelli, Esq. argued for respondent. Cause submitted.

Court recessed at 1:53 p.m. to change panel members. New panel members: The Honorable Patricia Benke, Acting Presiding Justice, and The Honorable Associate Justices Alex McDonald and James McIntyre

D043683 Kitlas et al. v. McIlwain

Cause called on merits. Raymond D. Kitlas, argued on behalf of himself. Kenneth L. Greenman, Jr., Esq. argued for respondent. Mr. Kitlas replied. Cause submitted.

Court adjourned at 2:21 p.m.

D046029 Kassab et al. v. Jolly/Department of Alcoholic Beverage Control and Alcoholic Beverage Control Appeals Board.

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
MARCH 18, 2005

D045230 Howell, Jr. v. Burns

The court has read and considered appellant's Motion to Vacate Dismissal, Permit Cure of Default and Stay Issuance of the Remittitur filed on March 11, 2005, and respondent's opposition filed on March 16, 2005. The court's order of January 11, 2005, dismissing the above-entitled appeal is vacated and the appeal is reinstated. Appellant is relieved from default for failure to timely file appellant's opening brief. The appellant's opening brief is due within 30 days from the date of this order.

**D045891 Episcopal Community Service et al. v. Superior Court of San Diego
County/Norgard**

The petition is denied.

D044086 Wagner v. Lim

The judgment is affirmed. Lim is entitled to costs on appeal. McDonald, J.;
We Concur: Benke, Acting P.J., Huffman, J.

D044793 In re Kevin V., a Juvenile

We reverse the \$119 fine imposed by the juvenile court and remand the matter for further proceedings in accordance with this opinion. In all other respects the orders are affirmed. McDonald, J.; We Concur: Nares, Acting P.J., Aaron, J.

D045909 Lombera v. Superior Court of San Diego County/People

The petition is denied.

D045214 Lang et al. v. Merrick

Respondents' unopposed motion to dismiss is granted. The appeal filed on September 27, 2004, is dismissed.

D045740 In re Cloud on Habeas Corpus

The petition is denied.

D045986 In re Andre H. on Habeas Corpus

The petition is denied.

**D045923 Vicor Corporation v. Superior Court of San Diego County/Ericsson Wireless
Communications, Inc.**

The petition is denied.

D046055 Horton v. Superior Court of Imperial County/People

The petition is denied.

D046027 Horton v. Superior Court of Imperial County/People

The petition is denied.

COURT OF APPEAL OF THE STATE OF CALIFORNIA
FOURTH APPELLATE DISTRICT
DIVISION ONE
MARCH 18, 2005 (Continued)

**D045918 Exar Corporation v. Superior Court of San Diego County/Ericsson Wireless
Communications, Inc.**
The petition is denied.